IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2006

Coram:

The Honourable Mr. Justice P. SATHASIVAM
&
The Honourable Mr. Justice V. DHANAPALAN

W.A. Nos. 783 & 784 of 2000
against
W.P. Nos.9668 & 12742 of 1992

1. The State of Tamil Nadu
represented by its Commissioner &
Secretary to Government
Education Department
Fort St. George, Chennai - 6

2. The Director of Elementary Education
College Road, Chennai - 6

3. The District Educational Officer
Chennai (East) Thayar Sahib Street
Triplicane, Chennai - 5

4. The Assistant Educational Officer
71, Thayar Sahib Street
Triplicane, Chennai - 5 Appellants in both the appeals
[Respondents 1 to 4 in WPs.].

Vs.

1. B. Kamatchi
Elementary Grade Teacher
S.S. Raghavendra Rao Elementary School
Chennai - 5

2. The Correspondent
S.S. Raghavendra Rao Primary School
Parthasarathy Street
Chennai - 5 Respondents in both the appeals
[Petitioner & 5th Respondent in
WPs.].

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 20.09.1999 passed in W.P. Nos. 9668 and 12742 of 1992.

For appellants Mr. M. Sekar
Special Government Pleader (Edn.)

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

For 1st respondent Mr. K.M. Vijayan, Senior Counsel
for Mr. D. Hari Paranthaman

COMMON JUDGMENT

(Judgment of the Court was delivered by V. DHANAPALAN, J.)

The above appeals have been filed by the official respondents 1 to 4 in W.P. Nos.9668 and 12742 of 1992 challenging the common order dated 20.09.1999 passed by a learned single Judge of this Court.

2. W.P. No.9668 of 1992 was filed by the first respondent herein for issuance of a writ of mandamus to direct the appellants herein to release the salary grant of the former and to pay the same to her.

3. W.P. No.12742 of 1992 was for the issuance of a writ of certiorari to call for the records relating to the proceedings of the second appellant herein in Na.Ka.No.60633/B19/91 dated 28.01.1992 and the consequential order of the fifth respondent herein dated 10.08.1992 and quash the same as illegal and arbitrary.

4. According to the first respondent herein who was the petitioner before the learned single Judge, she is a trained Elementary School teacher. After passing her +2 examinations, she joined Balar Kalvi Nilayam, Madras, a Government recognised Teacher Training Institute and studied a two-year course and after passing the examination, she was given Pre School Teacher Training Course Certificate Methods Nursery by the Department of Government Examinations, Madras. Originally, the Education Department was issuing certificate under the nomenclature of "Nursery Teachers Certificate Secondary Grade". But since 1988, for the same course, the certificate has been issued in the name of "Pre School Teacher Training Course Certificate Methods Nursery" by the State of Tamil Nadu. When the second appellant herein i.e. the Director of Elementary Education later on modified the name of the examination as "Pre School Teachers Training Course Certificate Methods Nursery", the words "Nursery, Montesseri and Kinder Garten School" were omitted. Since the nomenclature of the course is changed, the students who had completed the Pre School Teachers Training Course certificate are eligible to teach standards I and II.

5. After the change of name of the Certificate, the second appellant, vide his proceedings in Na.Ka.No.8381/B12/89 dated 09.01.1990 directed that the Elementary Grade vacancy should be filled up by the candidates possessing any one of the five certificates and the "Pre School Teacher Training Course Certificate Methods Nursery" is one among them. However, in the Tamil Nadu Recognised Private School Regulations Act, 1973 (hereinafter referred to as "the Act"), the prescribed qualification for the Elementary School teacher stands in the old nomenclature.

6. After the completion of her course, she was appointed as an Elementary Grade teacher in N. Sama Rao Primary School, Madras-5 on 01.08.1991 and her appointment was approved by the fourth appellant

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

herein vide his proceedings Na.Ka. No.274/91 dated 04.09.1991. Thereafter, she was transferred to the second respondent school and the same was approved by the third appellant. Since her salary from mid-September 1991 was withheld by the third appellant, she had filed the first W.P. No.9668 of 1992. The second appellant, after receiving notice in the writ petition, had directed the third and fourth appellants not to allow her to work in the school and therefore, the second respondent herein did not allow her to sign in the Attendance Register from 10.08.1992. Yet, she signed in the same with great difficulty and thereafter, she was on leave.

7. Meanwhile, she had been terminated from service by the order of the second respondent herein dated 10.08.1992 based on the direction of the second appellant vide his proceedings in Na.Ka.No.60633/B19/91 dated 28.01.1992, on the sole ground that the name of the Teachers Training Certificate was not mentioned in the Act. It is the contention of the first respondent that the Act came into existence in 1973 and whereas the nomenclature of the Certificate is changed in 1988 and the old name still remains in the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules"). It is the case of the first respondent that the second appellant, vide his proceedings in Na.Ka.No.8381/B12/89 dated 09.01.1990 has stated that the certificate issued by the State of Tamil Nadu is a valid one and as such, she possesses Teachers Training certificate issued by the State and hence, she is qualified to hold the post and since her appointment has been approved by the fourth appellant, there is no basis for terminating her services.

8. Aggrieved by the order of the second appellant and the consequential order of the second respondent, which, according to her are illegal and without jurisdiction, she had filed W.P. No.12742 of 1992 contending that her services cannot be terminated without following the provision under Section 22 of the Act and the procedure contemplated in Rule 17 of the Rules and since she had possessed the requisite qualification, the impugned orders are in violation of principles of natural justice.

9. The official respondents in the writ petitions did not file their counter whereas the second respondent school herein had filed counter and contended that the first respondent herein joined the school on 18.09.1991 and the second appellant herein, vide his proceedings PDL No.13A1/91 dated 11.11.1991, directed the Correspondent of the previous school where the first respondent was working to withhold her teaching grant until further orders and to recover from her salary grant already paid. According to the second respondent herein, made a request to the State Government on 26.05.1992 to pay her salary by treating Pre School Teachers Training Certificate Course equivalent to Nursery Teacher Certificate Secondary Grade. But, the third appellant, by enclosing the proceedings of the second appellant dated 28.01.1992, has directed the fourth appellant to take further action as there is no mention of the Pre School Teachers Training Certificate course obtained by the first respondent in the Rules and hence, she is not eligible for appointment as Elementary Grade teacher. Hence, as per the instruction, she was relieved from her services from 11.08.1992.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. Heard Mr. M. Sekar, learned Special Government Pleader (Education) and Mr. K.M. Vijayan, learned Senior Counsel appearing for Mr. D. Hari Paranthaman, learned counsel for the first respondent.

11. Mr. M. Sekar, learned Special Government Pleader (Education) appearing for the appellants, has contended that:

a. the common order of the learned single Judge in allowing the writ petitions has been passed erroneously without considering the fact that the first respondent does not possess the statutory educational qualification,

b. there is no mention in the Rules about the Pre School Teachers Training Certificate possessed by the first respondent and she does not possess Nursery, Montesseri or Kinder Garten School Leaving Certificate examination of the Secondary Grade to handle standards I and II only and that being so, she is ineligible to be appointed as Higher Grade teacher also known as Elementary Grade teacher,

c. the first respondent was appointed vide approval dated 04.09.1991 and when the fact that she did not possess the statutory qualification came to the knowledge of the Government, the third appellant has initiated proceedings and immediate steps were taken by the Department in terminating her services who is not qualified as per Annexure V of the Rules,

d. G.O. Ms. No.1251 dated 14.12.1992 does not make the first respondent eligible to be appointed to the post of Elementary Grade teacher by itself and so also the amendment to paragraph 3(ii) which includes Pre Primary Certificate,

e. the instruction to the Employment Exchange intended to verification of certificates of which Pre School Teachers Training Certificate is also included, does not make the first respondent eligible as per the Rules to be appointed as Elementary Grade teacher and

f. it is a wrong finding of the learned single Judge that the first respondent shall be deemed to be in service from 01.08.1991 with proper qualification and in fact, it ought to have been held that the first respondent is not entitled to salary and therefore, the common order passed by the learned single Judge has to be set aside.

12. On the other hand, Mr. K.M. Vijayan, learned Senior Counsel for the first respondent has contended that the proceedings of the second appellant dated 28.01.1992 stating that the Pre School Certificate has not been mentioned in the eligible qualification for higher grade teachers post and therefore, she has to be terminated from service and the consequential order dated 10.08.1992 of the second respondent are without any basis and not with reference to the relevant position of Rules and the G.O. Ms. No.1251 and therefore, these two orders are ex-facie illegal and the setting aside of the impugned orders by the learned single Judge is perfectly in accordance with the Rules and the G.O. Ms. No.1251.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

13. We have carefully considered the rival contentions of the learned counsel on either side. The only point which arise for consideration in these appeals is whether the petitioner in both the writ petitions / the first respondent herein possesses the requisite qualification for the post of an Elementary Grade teacher or not.

14. Before proceeding to consider the above points, it would be relevant for us to consider the Rule 15 (6) of the Rules and Annexure V to the Rules which read thus:

"15. Qualifications, conditions of service of teachers and other persons:

(6) The teacher and other persons employed in a private school shall possess the qualification specified in Annexure V."

Annexure V

Qualifications for appointment as teachers in private schools (Regulation)

Elementary Grade teacher	E.S.L.C. or its equivalent and Trained Teachers Certificate of Elementary Grade or its equivalent. Teachers who have passed the Nursery, Montessori and Kinder Garten School Leaving Certificate Examination of Secondary Grade shall be employed to handle Standards I and II only.

15. Further, it is also worth referring to the Government Order in G.O. Ms. No.1251 (Education) 14.12.1992 revising the procedure of appointment to the post of Secondary Grade Teachers/specialist Teachers in similar grade and scales of pay in Government/Municipal and Panchayat Union Schools and the relevant portion reads thus:

"3 (ii) Candidates holding pre-primary certificates/shall also be permitted to sit for screening test to be conducted by the Director of Government Examinations subject to the condition such candidates selected for appointment will be permitted to handle class I to III only."

16. Mr. K.M. Vijayan, learned Senior Counsel for the first respondent has brought to the notice of this Court that the expression "Pre-Primary Certificate" in clause 3(ii) cited supra has been subsequently amended as "Pre-School Teacher Training Course"

https://hcservices.ecourts.gov.in/hcservices/

17. A plain reading of the portions which are extracted above would make it clear that though the Government had not included the above course under the Act, it has stated that the candidates holding Pre Primary Certificates shall also be permitted to sit for screening test to be conducted by the Director of Government Examinations subject to the condition that such candidates selected for appointment will be permitted to handle classes I to III only. Therefore, it is clear that the Pre Primary Certificate is a valid one and the Pre School Teachers Training Course has been recognised by the Government and the State, on proper conduct of examination, has issued the certificate and the same is legally valid for consideration of appointment.

18. It is further seen that, vide proceedings in Rc.No.18310 ED3/96 dated 12.08.1996, the second appellant has directed the Employment Exchange to verify the professional educational qualification while sponsoring candidates for the post of teachers in which the Pre School Teachers Training Certificate is also included for verification and in view of the above proceedings, it is clear that Pre School Teachers Training Course is also recognised by the Government. Thus, as held by the learned single Judge, in our view also, taking advantage of the non-mentioning of the Pre School Teacher Training Course at the relevant point of time, cannot be a ground to disentitle the writ petitioner / first respondent herein to be appointed as an Elementary Grade teacher.

19. We have also perused the records, the rules position and the G.O. Ms. No.1251 dated 14.12.1992. It is not in dispute that the first respondent was appointed as an Elementary School teacher. It is also not in dispute that her appointment was approved by the appellants herein in two of their proceedings. Also, in view of the interim orders passed by this Court, she has been continuing in service.

20. The learned single Judge, after considering the Rules, clause 3(ii) of G.O. Ms. No.1251 dated 14.12.1992 cited supra and also the amendment to the said clause to the effect that the expression "Pre Primary Certificate" has been substituted by the expression "Pre School Teacher Training Course" and the fact that the Employment Exchange has been directed to verify the professional educational qualification of the candidates including Pre School Teachers Training Certificate, has come to the conclusion that the impugned order passed by the second appellant and the consequential order of the second respondent are without reference to the above said amendment and allowed the writ petitions holding that the writ petitioner shall be deemed to be in service from 01.08.1991 with proper qualification for the release of grant of the salary and setting aside the termination order.

21. At the cost of repetition, it is worth mentioning here that the Act was passed in year 1973 and the Rules came into force in 1974 and since the nomenclature of the Certificate was changed in the year 1988, the old name still remains in the Rules. Further, in the light of Rule 15(6) of the Rules and the provision in Annexure V of the Rules, both of which are extracted in paragraph 14 of this judgment and also the Government Order in G.O. Ms. No.1251 dated 14.12.1992 and the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

subsequent amendment to Clause 3 (ii) therein, we hold that the conclusion of the learned single Judge is proper.

Accordingly, the common order of the learned single Judge passed in the W.P. Nos. 9668 and 12742 of 1992 deserves acceptance and consequently, the appeals preferred by the official respondents deserve to be dismissed and accordingly, they are dismissed without any order as to costs. Consequently, connected C.M.P. Nos.7289 and 7290 of 2000 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad

To
1. The Commissioner & Secretary to
the Government of Tamil Nadu
Education Department
Fort St. George, Chennai - 6

2. The Director of Elementary Education
College Road, Chennai - 6

3. The District Educational Officer
Chennai (East) Thayar Sahib Street
Triplicane, Chennai - 5

4. The Assistant Educational Officer
71, Thayar Sahib Street
Triplicane, Chennai - 5

+ 2 CC to the Government Pleader SR NO 34406, 34923

+ 1 CC To Mr. D.Hariparanthaman, Advocate SR NO. 34521

W.A. Nos. 783 & 784 of 2000
01.08.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/